

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6584

Petition of Incomnet Communications)
Corporation for Approval of a Transfer of)
Control)

Order entered: 12/19/2001

I. INTRODUCTION

This case involves a petition filed on October 3, 2001, by Incomnet Communications Corporation ("Incomnet" or "Petitioner"), seeking Vermont Public Service Board ("Board") approval under 30 V.S.A. § 107, of a transfer of control to Ironwood Telecom, LLC ("Ironwood"). The transfer was completed on May 22, 2001, pursuant to a Chapter 11 Plan of Reorganization that was confirmed by the U.S. Bankruptcy Court.

On December 5, 2001, the Vermont Department of Public Service ("Department") submitted a letter to the Board indicating that the Department had no objection to the transfer of control. The Department noted that the transaction would promote the public good. Further, the Department also had no objection to the issuance of an order without hearing or further investigation, as provided under 30 V.S.A. § 107.

II. FINDINGS OF FACT

Based upon the petition and accompanying documents, the Board makes the following findings of fact.

1. On April 1, 1996, National Telephone Communications, Inc. ("National") received a Certificate of Public Good (CPG No. 166) to provide telecommunications services in Vermont. In 1999, National's name was changed to Incomnet. Petition at 1.

2. Ironwood, a Colorado limited liability company, is a privately-owned holding company which has obtained controlling stock ownership of Incomnet through the Chapter 11 Plan of Reorganization issued by the U.S. Bankruptcy Court ("the Plan"). Ironwood is not certificated to provide telecommunications services in Vermont. Petition at 1.

3. Under the terms of the Plan, and effective May 22, 2000, Ironwood obtained controlling stock ownership of Incomnet. Following the transaction, Incomnet will continue to operate in all respects as it currently operates, pursuant to existing operating authority. Neither the name of nor the terms and conditions of service offered by Incomnet will be affected by the transaction. Petition at 3-4.

4. Completion of the proposed transaction will promote the public interest in that it will promote competition among telecommunications providers by providing Incomnet with access to greater financial resources, thus strengthening its competitive position and enabling it to pursue marketing and business plans more effectively. Petition at 4.

III. CONCLUSIONS OF LAW AND DISCUSSION

The proposed transaction requires Board approval under 30 V.S.A. § 107, which applies to a direct or indirect acquisition of a controlling interest in a Vermont utility.¹ Under Section 107, a "controlling interest" is defined as 10% or more of the outstanding voting securities of a company. Section 107 requires a finding that the transfer of control will promote the public good. This standard is met in this case. The proposed transaction will promote the public good, because the transfer of control of Incomnet will allow it access to greater financial resources, thus allowing it to operate in a more flexible manner. In the competitive arena of telecommunications, the overall effect of this transfer may promote more customer choice in terms of services, with stronger competitors in the Vermont telecommunications market. It should also be noted that the transfer of control will not have an adverse impact on Vermont consumers as Incomnet will continue to operate according to its present authority.

For all of the above reasons, the transfer of control of Incomnet should be approved.

IV. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. Approval under 30 V.S.A. §§ 231 and 311 is not required because the current holder of the Certificate of Public Good will continue to be the entities providing telecommunications service in Vermont.

1. The transfer of control of Incomnet Communications Corporation to Ironwood Telecom, Inc., is approved.

DATED at Montpelier, Vermont, this 19th day of December, 2001.

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| <u>s/Michael H. Dworkin</u> |) | |
| |) | PUBLIC SERVICE |
| |) | |
| <u>s/David C. Coen</u> |) | BOARD |
| |) | |
| |) | OF VERMONT |
| <u>s/John D. Burke</u> |) | |

OFFICE OF THE CLERK

Filed: December 19, 2001

Attest: s/Susan M. Hudson

Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us).

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.